

**COMMONWEALTH OF KENTUCKY
MINE SAFETY REVIEW COMMISSION
ADMINISTRATIVE ACTION NO. 02-MSRC-003**

**COMMONWEALTH OF KENTUCKY,
DEPARTMENT OF MINES AND MINERALS**

COMPLAINANT

v.

HAROLD HACKER

RESPONDENT

FINAL ORDER

This matter having come before the Commission on the Joint Motion to Approve Settlement Agreement between the Complainant and Respondent Harold Hacker, and the members of the Commission having reviewed the Settlement Agreement filed on February 12, 2003 in the matter herein, and the Commissioners being sufficiently advised,

IT IS HEREBY ORDERED as follows:

1. The Joint Motion to Approve Settlement Agreement is **GRANTED**;
2. The Respondent, Harold Hacker's Underground Mine Foreman's Certificate, # A-***-**, issued by the Commonwealth of Kentucky, shall be revoked for a period of eighteen (18) months, effective February 12, 2003;
3. Pursuant to the terms of the Settlement Agreement, the Respondent, Harold Hacker, has agreed that if he wants to become a certified underground mine foreman in the Commonwealth of Kentucky after the expiration of said revocation period, he must re-take and pass the appropriate Kentucky examination, prior to re-applying to the Kentucky Mining Board for an underground mine foreman's certificate;

4. The Respondent, Harold Hacker, shall turn over his underground mine foreman's certificate to a representative of the KDMM on or before February 3, 2003, at a time and place to be arranged by the parties;

5. The Respondent, Harold Hacker's Surface Mine Foreman's Certificate, # S-***-**, issued by the Commonwealth of Kentucky, shall be revoked for a period of eighteen (18) months, effective February 12, 2003;

6. Pursuant to the terms of the Settlement Agreement, the Respondent, Harold Hacker, has agreed that if he wants to become a certified surface mine foreman in the Commonwealth of Kentucky after the expiration of said revocation period, he must re-take and pass the appropriate Kentucky examination, prior to re-applying to the Kentucky Mining Board for a surface mine foreman's certificate;

7. The Respondent, Harold Hacker, shall turn over his surface mine foreman's certificate to a representative of the KDMM on or before February 3, 2003, at a time and place to be arranged by the parties;

8. The Respondent, Harold Hacker's Underground Mining Instructor's Certificate, # MI-***-**, issued by the Commonwealth of Kentucky, shall be revoked for a period of eighteen (18) months, effective February 12, 2003;

9. Pursuant to the terms of the Settlement Agreement, the Respondent, Harold Hacker, has agreed that if he wants to become a certified underground mine instructor in the Commonwealth of Kentucky after the expiration of said revocation period, he must re-take and pass the appropriate Kentucky examination, prior to re-applying to the Kentucky Mining Board for a mining instructor's certificate;

10. The Respondent, Harold Hacker, shall turn over his underground mine instructor's certificate to a representative of the KDMM on or before February 3, 2003, at a time and place to be arranged by the parties

11. The Settlement Agreement signed by the parties and filed with the Commission shall be incorporated by reference and attached hereto;

12. This Final Order shall be considered to constitute a "first offense" as that term is defined in 805 KAR 8:010, Section 1(5). Future allegations of separate offenses by Respondent Hacker, resulting in an adjudication of guilt by the Commission, shall be deemed "subsequent offenses" as defined by 805 KAR 8:010, Section 1(13); and

13. This Final Order represents a final disposition of all issues between the Complainant and the Respondent, Harold Hacker, in this matter. Failure to comply with the terms and conditions of this Final Order may result in further action by the Commission. Pursuant to KRS 351.194(8), an appeal of an order of the Commission must be filed in the Franklin Circuit Court within thirty (30) days of the entry of an order.

Entered this _____ day of February 2003.

BAYARD V. COLLIER, CHAIR
MINE SAFETY REVIEW COMMISSION

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing FINAL ORDER was served by certified mail, return receipt requested, and by regular mail, postage pre-paid to the following this _____ day of February 2003:

HON. RANDALL SCOTT MAY
BARRET, HAYNES, MAY CARTER
& ROARK
P.O. DRAWER 1017
HAZARD KY 41702
Attorney for Harold Hacker

And by messenger mail to:

COMMISSIONER FRANK DELZER
DEPT. OF MINES & MINERALS
1025 CAPITAL CENTER DRIVE
FRANKFORT KY 40601

HON. TONY OPPEGARD
GENERAL COUNSEL
DEPT. OF MINES & MINERALS
1025 CAPITAL CENTER DRIVE
FRANKFORT KY 40601

And the original shall be kept on file:

MINE SAFETY REVIEW COMMISSION
132 BRIGHTON PARK BLVD.
FRANKFORT KY 40601

DIANE SCHULER FLEMING
GENERAL COUNSEL
MINE SAFETY REVIEW COMMISSION

KENTUCKY MINE SAFETY REVIEW COMMISSION

KENTUCKY DEPT OF MINES & MINERALS)	
)	
Complainant)	
)	
v.)	Administrative Action No. 02-MSRC-003
)	
)	
HAROLD HACKER)	
)	
Respondent)	
)	

SETTLEMENT AGREEMENT

Come the Complainant, the Kentucky Department of Mines & Minerals (“KDMM”), and the Respondent, Harold Hacker (“Hacker”), through their respective counsel, and hereby state that they have agreed to a settlement of the above-styled disciplinary proceeding, according to the following terms:

In consideration for the cancellation of the hearing scheduled for March 13, 2003, and the dismissal of this action against him, Hacker admits to the facts set forth in paragraphs 4-8 of KDMM’s Complaint, admits that his actions violated KRS 352.201 (1), and hereby agrees to the **REVOCATION OF HIS UNDERGROUND MINE FOREMAN’S CERTIFICATE (#A-***-**) FOR A PERIOD OF EIGHTEEN (18) MONTHS**; the **REVOCATION OF HIS SURFACE MINE FOREMAN’S CERTIFICATE (#S-***-**) FOR A PERIOD OF EIGHTEEN (18) MONTHS**; and the **REVOCATION OF HIS UNDERGROUND MINING INSTRUCTOR’S CERTIFICATE (#MI-***-**) FOR A PERIOD OF EIGHTEEN (18) MONTHS**, each of said revocation periods to be effective upon the signing of this Settlement Agreement by both parties. Hacker shall turn over his underground and surface mine foreman’s

certificates, as well as his underground mining instructor's certificate, to a representative of the KDMM on or before February 3, 2003, at a place and time to be arranged by the parties.

Hacker further agrees that if he wants to become a certified underground or surface mine foreman, or a certified underground mining instructor, in the Commonwealth of Kentucky after the expiration of the said revocation periods, he will have to re-take and pass the applicable Kentucky examination prior to re-applying to the Kentucky Mining Board for a foreman's certificate or a mining instructor's certificate.

Hacker also agrees that this Settlement Agreement, and any final order issued herein by the Mine Safety Review Commission ("the Commission"), will be considered by the Commission to constitute a "first offense", as that term is defined at 805 KAR 8:010, Section 1 (5); and that any future adjudication against him by the Commission will be deemed a "subsequent offense" as defined at 805 KAR 8:010, Section 1 (13).

The parties state that they have carefully read and considered this Settlement Agreement prior to signing the Agreement, and that they understand and agree to its terms and provisions. KDMM and Hacker acknowledge that there are no other promises, inducements, representations, or agreements in connection with this Settlement Agreement other than those expressly set forth in writing herein.

HAROLD HACKER

Middlesboro, Kentucky *****

FRANK X. DELZER, Commissioner
Kentucky Dept. of Mines & Minerals
P.O. Box 2244
Frankfort, Kentucky 40602

DATE

DATE